

Open Minutes

Missouri State Board of Optometry

**July 13, 2002
The Lodge of Four Seasons
Lake Road HH
Lake Ozark, Missouri**

The open meeting of the Missouri State Board of Optometry was called to order by Dr. Max T. Aldrich, President, at approximately 8:00 a.m. on Saturday, July 13, 2002, at the Lodge of Four Seasons, Lake Road HH, in Lake Ozark, Missouri.

BOARD MEMBERS PRESENT:

Dr. Max T. Aldrich, President
Dr. Karen B. Rosen, Vice President
Dr. Cathy L. Frier, Secretary
Dr. Terrance M. Swinger, Member
Dr. W. Carter Glass, Member
Ms. Vickie E. Young, Public Member

STAFF MEMBERS PRESENT:

Sharlene Rimiller, Executive Director

LEGAL COUNSEL PRESENT:

Ms. Elena Vega, Assistant Attorney General
Mr. Edward 'Chip' Walsh, Private Legal Counsel

GUESTS:

Pam Wissman, Wal-Mart Vision Centers

To better track the order in which items were taken up on the agenda, each item in the minutes will be listed in the order it was discussed in the meeting.

APPROVAL OF THE AGENDA

A motion was made by Dr. Rosen and seconded by Dr. Frier that the agenda be approved with the addition of an item to discuss the MOA Leadership meeting and that the inquiry received from Dr. Michael R. Duenas be moved to the closed agenda. Motion carried unanimously.

APPROVAL OF MINUTES

A motion was made by Ms. Young and seconded by Dr. Frier that the minutes of the February 14, 2002 board meeting and the mail ballot minutes of March 18, 2002 and May 17, 2002 be approved as written. Motion carried unanimously.

EXECUTIVE DIRECTOR REPORT

Financial Statement

Mrs. Rimiller presented the Board with the following financial statement for FY-02 as of May 31, 2002.

| | | | | |
|---|--------------------|---------------------|--------------------|----------------------------|
| Beginning Fund Balance | | | | \$202,727.76 |
| Revenue (7/1/01 to 5/31/02) | | | | <u>\$132,415.85</u> |
| Fund Balance Sub Total | | | | \$335,143.61 |
| | | | | |
| Appropriations to Board: | | | | |
| | | | | |
| Personal Service | \$41,726.60 | | | |
| Expense & Equipment | <u>\$42,604.00</u> | | | |
| | | | | |
| Total Appropriations | \$84,330.60 | | \$84,330.60 | |
| | | | | |
| Appropriation Expenditures: | | | | |
| | | | | |
| Personal Service | \$28,718.02 | | | |
| Expense & Equipment | <u>\$35,775.34</u> | | | |
| | | | | |
| Total Appropriation Expenditures | \$64,493.36 | \$64,493.36 | <u>\$64,493.36</u> | |
| | | | | |
| Fund Transfers: (Projected for Year) | | | | |
| | | | | |
| Rent & Utilities | \$2,279.82 | | | |
| General Revenue | \$18,400.00 | | | |
| Optical Imaging | \$1,171.20 | | | |
| Hancock | \$0.00 | | | |
| DED/MIS | \$1,862.69 | | | |
| Refunds | \$700.00 | | | |
| Professional Registration | \$28,291.72 | | | |
| FY-2001 Transfers paid in FY-2002 | <u>\$6,713.47</u> | | | |
| | | | | |
| Total Transfers | \$59,418.90 | <u>\$59,418.90</u> | | |
| | | | | |
| Total Fund Expenditures | | \$123,912.26 | - | \$123,912.26 |
| Estimated Revenue (6/1/02 – 6/30/02) | | | + | \$3,800.00 |

| | | | | |
|--|-------------------|--|--------------------|---------------------|
| <u>Fund Balance Sub Total</u> | | | = | \$215,031.35 |
| Unexpended Appropriations: | | | | |
| Personal Service | \$13,008.58 | | | |
| Expense & Equipment | <u>\$6,828.66</u> | | | |
| Total Unexpended Appropriations | \$19,837.24 | | \$19,837.24 | \$19,837.24 |
| <u>Fund Balance Projected as of 6/30/02</u> | | | | \$195,194.11 |

Mrs. Rimiller reported that expense and equipment expenditures increased significantly this fiscal year because of costs associated with litigation. Since all the expenditure information for FY-02 is not yet available, Mrs. Rimiller said that she would provide the Board with a fiscal year end financial statement at the October meeting. Based on projections, Mrs. Rimiller estimated that the beginning fund balance in FY-03 should be very close to that in FY-02, which means that expenditures should not exceed revenues for the year.

Legislation

Mrs. Rimiller provided a report to the Board regarding truly agreed to and finally passed legislation from this past session. The report included information regarding the measure that authorizes the Office of Administration to transfer money from the Board's fund to reimburse General Revenue for the services provided by the Office of Administration. At this time, the allocation from the Board's fund is not that significant but Mrs. Rimiller indicated that this is something that should be monitored closely.

Mrs. Rimiller reported that according to Ms. Vega, Senate Bill No. 714 that was included in the agenda notebooks will not affect optometry because optometrists are not considered health care professionals pursuant to section 44.010, RSMo. The Board discussed whether any action should be taken to pursue an amendment to section 44.010 to include optometrists in the definition of a health care professional. At this time, the Board did not see a need to pursue such legislation.

FY-04 Budget

Mrs. Rimiller provided a brief report on the FY-04 budget timeline. There were no recommendations for any decision items by the Board for the FY-04 budget.

Rulemaking Status Report

Mrs. Rimiller reported that the amendments to the Board's Fee rule and Annual License Renewal rule went into effect on June 30th. These rules establish the biennial renewal cycle. The Board discussed the issuance of new licenses during the period of the upcoming renewal cycle. Mrs. Rimiller explained that new licenses are being issued with an expiration date of October 31, 2002, which means new licensees must renew by the end of this renewal cycle but they will be exempt from obtaining the continuing

education requirements if they passed the Part III examination during the continuing education reporting period. Licensees who are licensed before October 31, 2002 will need to have eight hours of continuing education for each year of the two-year renewal cycle. The Board asked that the information regarding the continuing education requirements under the new rule be sent out to all licensees. Mrs. Rimiller mentioned that she had already included an article in the recently published newsletter but it will be helpful that the information be circulated to the licensees periodically in the next year or two. Dr. Rosen will include this in her report to the MOA in October.

Mrs. Rimiller also reported that the Licensure by Examination, Licensure by Reciprocity and the Fee rules are being amended to eliminate the fingerprinting requirement. She thought that the amendments should appear in the August 1, 2002 issue of the Missouri Register. Mrs. Rimiller explained that she is also taking this opportunity to change the name of the NBEO's clinical examination in the proposed amendment from VRICS to Patient Assessment and Management (PAM).

Continuing Education Course Approval

The Board reviewed the list of continuing education courses that were approved between the date of the last meeting and the date of this meeting. A motion was made by Dr. Rosen and seconded by Dr. Swinger that the Board ratify approval of the continuing education courses from the list provided. Motion carried unanimously.

BOARD TRAVEL

The Board reviewed the tentative agenda for the CLEAR 2002 Conference that is scheduled on September 12th – 14th in Las Vegas, Nevada. A motion was made by Dr. Rosen and seconded by Dr. Frier that Mrs. Rimiller and Dr. Swinger represent the Optometry Board at this year's CLEAR conference. Motion carried unanimously.

MAIL ORDER CONTACT LENSES

Dr. Rosen provided the Board with the historical information on contact lens legislation. The legislation was introduced in 1993 and withdrawn. The proposal banned mail order contact lenses except by an optometrist or a physician. Dr. Rosen highlighted the problems in Missouri regarding the plano contact lenses being sold by beauty supply houses and flea markets. She also emphasized the fact that there is nothing being done to stop this illegal practice. Mrs. Rimiller mentioned that the last communications received from the FDA regarding the Board's referral of these types of complaints is that they are waiting for the Washington office to decide the best course of action. The problem is nationwide and Mrs. Rimiller reported that she believes the FDA wants to address it nationally instead of on a state-by-state basis. Dr. Aldrich indicated that there are several states that have contact lens laws and are able to do more than what is being done in Missouri, which is nothing. Dr. Glass informed the Board that at the AOA planning meeting last January, he met up with Craig Steinberg, who is an optometrist and an attorney. He has a client who is a former employee of 1-800 Contacts. Supposedly, this client has a business helping states draft legislation that will close the loopholes regarding the 1-800-Contacts marketing practices. 1-800-Contacts is now suing and that is all Dr. Glass knows about the case at this time. Dr. Rosen said she

wants to see something done to keep the beauty supply houses, grocery stores and flea markets in Missouri from illegally selling the plano contact lenses. It was thought at one time that this was something the Law Committee was suppose to address when they worked on the optometry law re-write.

Dr. Aldrich reported that he contacted Dr. Poynter to ask if he would replace Dr. Snider as chair of the Law Committee. Because Dr. Snider was recently appointed to the Heart of America Board, he will not have time to continue with this project. Dr. Poynter has agreed to take over this responsibility with the understanding that the intent of the re-write is to simply re-order the series of optometry law changes that have occurred over a period of many years and clarify what is already written. There would be no substantive changes in the re-write. Dr. Poynter has said that he would work with Elena Vega on this project. He is not asking for any per diem for his work. However, he is asking for reimbursement of any necessary expenses. A motion was made by Dr. Rosen and seconded by Dr. Glass that the Board appoint Dr. Poynter as a consultant to work on the re-write of the optometry law. Motion carried unanimously. Dr. Rosen and Dr. Glass volunteered to work on the Law Committee with Dr. Poynter.

MATTHEW J. BOWMAN, O.D.

The Board considered Dr. Bowman's question regarding the application of 4 CSR 210-2.060 (12). Dr. Bowman is an independent contractor. He believes that he is not associated in business with the two optical companies from which he receives a daily per diem. He is not an employee nor does he receive any benefits from the optical companies. Dr. Bowman is asking if his sign posted outside the entrance of his office that reads, "Matthew Bowman, O.D. Independent Doctor of Optometry" satisfies the disclosure requirement in the Board's rule if the Board should determine that he is "associated in business" with these optical companies. Motion by Dr. Rosen and seconded by Dr. Frier that the Board notify Dr. Bowman that he is associated in business with the two optical companies as that term is used in the rule due to the fact that he receives a daily per diem and that his signage meets the disclosure requirements but he is to be reminded that he needs to post a copy of his license at each of his office locations. Motion carried unanimously.

ARBO ANNUAL MEETING REPORT

Dr. Aldrich and Mrs. Rimiller provided the Board with a report on their attendance at the annual ARBO meeting held on June 23-25, 2002, in New Orleans, Louisiana. It was reported that the NBEO is phasing out the TMOD examination and as a result, State Boards may need to examine their rules and consider if changes are in order. The last TMOD examination is scheduled in April of 2004. The TMOD examination is a required examination for Missouri licensed optometrists who apply for TPA certification who have not completed a comprehensive examination given as part of their TPA training. Mrs. Rimiller noted that she does not recall the last time the Board received an application for TPA certification from a Missouri licensed optometrist and therefore, the examination may have outlived its usefulness as indicated by Dr. Wallace. All new applicants for licensure must pass all parts of the NBEO examination and Dr. Rosen indicated that the therapeutic questions are included in the written Part III examination. Dr. Aldrich mentioned that the State of Illinois passed legislation requiring that all their licensees be

TPA certified by 2006. For that to happen in Missouri, there would need to be a law change and the Board already agreed that the optometry law re-write would not include any substantive changes, unless Dr. Poynter's committee decides to work on other changes in the statute, such as what might be considered consent language. Mrs. Rimiller was asked to look at the rules to see what amendments may be necessary with regard to the NBEO's elimination of the TMOD examination. Mrs. Rimiller was also asked to contact Dr. Poynter to let him know of the Board's decision.

REPORT ON CONTINUING EDUCATION STUDY

The Board reviewed the final summary report on continuing education received from the Missouri Training Institute at the University of Missouri-Columbia. Mrs. Rimiller provided the Board with an historical overview of how this study was started as well as its funding source. Mrs. Rimiller also noted that the Division people are very disappointed in the end result of this study and there was even some discussion of not making the final payment.

OPHTHALMIC TECHNOLOGIST

Dr. Rosen reported that there is a new degree program at UMKC for ophthalmic technologists, who are trained to perform refractometry. The Board requested and received additional information from the Interim Dean regarding this term, as well as the scope of the training involved in the program. Further discussion of this item was tabled for closed session for attorney-client communications.

LEGISLATION

Mrs. Rimiller provided a report to the Board regarding the legislative process and what needs to be done between now and January in order for the Board to move forward with any legislative proposals. Since the Board decided to wait for the Law Committee recommendations on legislation, the Board will not send through any requests to pursue legislation this year. Mrs. Rimiller reminded the Board that the same process must be followed for legislation that is pursued outside the Board if the Board wants to take a position publicly either in support of or in opposition to the legislation.

ELECTION OF OFFICERS

Dr. Aldrich called for nominations for the office of Secretary of the Board. Dr. Swinger nominated Dr. Glass. Nomination seconded by Dr. Rosen. There being no further nominations, Dr. Glass was elected to the office of Secretary by acclamation.

Dr. Aldrich called for nominations for the office of Vice President of the Board. Dr. Glass nominated Dr. Frier. Nomination seconded by Dr. Swinger. There being no further nominations, Dr. Frier was elected to the office of Vice President by acclamation.

Dr. Aldrich called for nominations for the office of President of the Board. Vickie Young nominated Dr. Rosen. Nomination seconded by Dr. Glass. There being no further nominations, Dr. Rosen was elected to the office of President by acclamation. The new officers will assume their positions immediately following this meeting.

MOA LEADERSHIP CONFERENCE

Dr. Glass and Dr. Aldrich provided the Board with a report on the MOA Leadership Conference that was recently held at Lake Ozarks. This was a retreat designed to plan future activities of the State Association. While attending the conference, Dr. Aldrich said he was questioned about why there has not been any attempt made to increase the number of continuing education hours required for re-licensure, why there are still three different licensing levels, and what is being done to seek legislative authority for injectables. There was also some discussion about drafting laser legislation. It was noted that the last expansion of the practice act was done in 1994.

CLOSED SESSION

Motion was made by Dr. Rosen and seconded by Ms. Young to move into closed session pursuant to section 610.021 (1) and (14) RSMo, for the purpose of discussing complaints, investigative reports, applicants for licensure, general legal actions, causes of action or litigation and any confidential or privileged communications between the Board and its attorney. Motion carried unanimously.

OPHTHALMIC TECHNOLOGIST

A motion was made by Dr. Rosen and seconded by Ms. Young that the Board not pursue any further action regarding UMKC's degree program with a concentration in ophthalmic technology. Motion carried unanimously.

DIAGNOSTIC TESTS PERFORMED BY NON-PHYSICIANS

The Board discussed the correspondence received from Mr. Joe Galeazzi, Vice President, Medical Administration, Children's Mercy Hospitals and Clinics. Mr. Galeazzi is asking if an optometrist can supervise a technician performing certain diagnostic tests. A motion was made by Dr. Glass and seconded by Dr. Swinger that a letter be written to Mr. Galeazzi to inform him that optometrists, depending upon their level of certification, may supervise a technician performing diagnostic testing. Motion carried unanimously.

COMPREHENSIVE PATIENT CARE FOR DIABETES

The Board reviewed the correspondence received from Dr. Michael R. Duenas asking whether or not optometrists licensed in Missouri are authorized to prescribe a blood glucose monitor and supplies for home patient use. Additionally, Dr. Duenas is asking if optometrists in Missouri are authorized to check a blood glucose level in the office. A motion was made by Dr. Rosen and seconded by Dr. Swinger that the Board approve Ms. Vega's draft response to Dr. Duenas' inquiry indicating that optometrists may provide comprehensive eye care as described in Section 336.010, RSMo 2000, and Section 336.220, RSMo 2000 for patients, including diabetic patients, and that optometrists are authorized to perform diagnostic procedures to make an initial diagnosis of diabetic retinopathy, but optometrists are not authorized to prescribe a blood glucose monitor and supplies for home use. Motion carried unanimously.

LEGAL SERVICES CONTRACT

The Board reviewed the renewal provisions in the contract for legal services and considered Mr. Bradford's agreement letter to extend the contract for another year under the same terms. A motion was made by Dr. Rosen and seconded by Dr. Swinger that the Board renew the contract for legal services with Glenn E. Bradford & Associates, P.C. for FY-03. Motion carried unanimously.

ADJOURNMENT

There being no further business to be brought before the Board at this time, a motion was made by Dr. Swinger and seconded by Ms. Young that this meeting adjourn. Motion carried unanimously. The meeting adjourned at approximately 5:00 p.m.

Respectfully submitted,

Sharlene Rimiller, Executive Director

Approved by the Board on: _____